

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10137 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No.

DHARMENDRASING DOLUBHA ZALA

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR YATIN SONI for Petitioners
MR SN BHATT for Respondent No. 1
MS HARSHA DEVANI ASSTT. GOVT. PLEADER
for Respondent No. 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 16/01/97

ORAL JUDGEMENT

ORAL JUDGMENT:

Rule. Mr.Sandip Bhatt, learned counsel waives service of notice of Rule on behalf of respondent no.1. Ms.Harsha Devani, learned Asstt. Govt. Pleader waives

service of notice of Rule on behalf of respondents nos.2 and 3. At the request of learned counsel appearing for the parties, the petition is heard today.

2. By means of filing this petition under Art. 226 of Constitution, the petitioners have prayed to declare the action of the respondent no. 2 of prohibiting respondent no.1 Bank to pay any amount to petitioners out of their accounts with Bank is without jurisdiction illegal, unjust and arbitrary. The petitioners have further prayed to direct the respondents to permit the petitioners to operate the Bank Accounts opened by them with respondent no.1 Bank.

3. The petitioner no.1 is the father of petitioners nos.2 and 3. The petitioner no.1 has opened Home Savings Account with State Bank of Saurashtra, Sadar Bazar Branch, Rajkot. The petitioners have also jointly opened Current Accounts with the said Bank. One Rajendra Jayantilal Mankodi has filed complaint on March 8, 1996 with Pradyuman Nagar Police station against the petitioners and another for the offences punishable under Secs. 420- 467- 468- 471- 120B and 511 of the Indian Penal Code. The petitioner no.1 had drawn a cheque for an amount of Rs.11,000/- on November 8, 1996. However the said cheque was not honoured by the respondent no.1 as respondent no.2 has prohibited the bank to pay any amount to petitioners out of their accounts. This is evident from communication dt. November 8, 1996 issued by the respondent no.1 to the petitioner no.1 which is produced at Annexure B to the petition. In the petition, the petitioners have claimed that the Police Officer has no power to direct the respondent no.1 to stop payment of the cheque drawn on the respondent no.1, nor the respondent no.1 Bank is justified in not paying the amount mentioned in the cheque to the petitioner on the ground that the Bank has received instructions from the Police Officer not to permit the petitioners to operate the bank account. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

4. The petition was placed before the court for admission hearing on December 13, 1996. After hearing learned counsel for the petitioners, notice was issued making it returnable on December 18, 1996. Though the respondents are duly served, no affidavit in reply has been filed by any of the respondents controverting the averments made in the petition. The question which arises for consideration of the court is whether respondent no.2 has authority to prohibit the respondent

no.1 Bank not to make payment of any amount to the petitioners out of their accounts with Bank.

5. Before considering the question posed in the petition, it would be relevant to notice relationship between a Banker and customer and nature of amount lying in the bank account of a customer. The money on being deposited by a customer belongs to the Bank and the customer has a credit for the sum deposited, an actionable claim for that amount. The Bank has right to possess currency notes received in the ordinary course of business without suspicion of the notes being involved in commission of an offence. The relationship of a banker and customer who pays money into the Bank is an ordinary relation of creditor and debtor with a superadded obligation arising out of customs of bankers to honour the customers's drafts. The position is that once money is deposited by a person with a Bank, there remains only a debt due from the Banker to the customer. When a customer opens an account with a Bank, he gives some money to the Bank. The money can not be claimed by customer in specie. The money can be utilised by the Bank in any permissible manner it likes. The only liability which the Bank undertakes, is that it agrees that whenever the customer demands, it would pay him equivalent sum either in full or in part. The Bank really is the debtor of the customer to that extent. It is not necessary for it to keep any money always in hand in anticipation of any demand to be made by the customer. When the customer actually makes a demand, it can procure necessary amount from any one and pay it to the customer.

6. This being the legal position when money alleged to have been criminally misappropriated are deposited by an accused with a Bank, the money cannot be regarded as property capable of production within Sec. 452 of the Code of Criminal Procedure, 1973. The money deposited becomes the property of Bank. The depositor has only actionable claim and the Bank owes a debt to him. The debt can be attached by criminal court as contemplated by Sec. 83(3) of the Code of Criminal Procedure, 1973. Sec.102 of the Code of Criminal Procedure, 1973 deals with powers of Police Officer to seize certain property which reads as under:-

Sec.102:-

- (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any

offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

A bare reading of the section makes it abundantly clear that seizure of debt is neither contemplated, nor empowered at all. All that the section provides, is that any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence can be seized. Under Section 102 of the code, there can be 'no stop order' on the bank preventing the accused from operating on his account. Having regard to the nature of amount deposited by customer in a bank account, it cannot be said that there is any "property" with the Bank of which actual physical possession can be taken. Sec.102 of the code does not appear to contemplate a Police Officer prohibiting the payment of a debt by a debtor to the accused person. If that can be done, it may create unnecessary complications. For instance, if after stealing Rs.1,000/- an accused person lends it on a mortgage or a bond to some one who borrows it for saving his property for being sold in execution of a decree. Can the Police Officer who is investigating the case of theft, direct the debtor that he should not pay the money for the satisfaction of his decree and allow his property to be sold in execution of the decree? Stopping of payment of cheque presumably with a view to passing some order with regard to amount lying in the account, at the conclusion of trial is evidently not covered by this section. The order is in nature of attachment before judgment. Such an order is not covered by Sec. 102 of the Code. In a Criminal case, the accused has to be presumed to be innocent till he is adjudged guilty. An order to his prejudice which has the effect of attaching property would be inconsistent with this fundamental principle of criminal jurisprudence.

7. The words emphasized and relied upon on behalf of the petitioners are " seizure of property ". The use of these words shows that what is contemplated by the section is moveable property of the nature mentioned in the section which could actually be seized by the police officer. Here the Police Officer has not actually seized any property. What he has done is that he has directed the Bank with which the petitioners have an account not to pay any amount out of the accounts to them. According to its dictionary meaning, the word "seize " means to lay hold of suddenly or forcibly; to take hold of; to reach and grasp; to clutch". It is meant "to take possession of, or appropriate, in order to subject to the force or operation of a warrant, order of court or other legal process ". A reference to some of the other provisions of the Code of Criminal Procedure also shows that the word "seizure" has been used in the Code in connection with the taking of actual physical possession of the moveable property. For instance, in Sec. 83 where attachment is provided for sub-sec.(3) relates to a debt or other moveable property. The attachment of such property can be made (a) by seizure; or (b) by the appointment of a receiver; or (c) by an order in writing prohibiting delivery of such property to the proclaimed person or to any other on his behalf or (d) by all or any of two such methods as the court thinks fit. Here, it appears to be obvious that the first method has been used with reference to the moveable property capable of actual seizure. The rest of the methods have been used with reference to an attachment of any moveable properties which are not capable of actual seizure. In sub-sec.(4) of Sec.83, several methods have been mentioned which are to be followed in connection with the attachment of immoveable property, but in clause (a) of sub-sec.(4) of Sec. 83, the word used is not "seizure" but words used are " of taking possession ". So where the property concerned is moveable property of which actual physical possession can be taken, the word used is "seizure" but where property concerned is an immoveable property, the words used are "taking possession". In Sec. 100, sub-sec.(5) of the Code, there is a provision for preparing a list of property found at the time of a search. Thereto it will be found that the word "seized" is used for moveable properties found at that time. These uses of the words " seized" appears to be in consonance with the dictionary meaning of word that "taking of actual custody". There appears to be no reason why in Sec.102 of the code, the word should be interpreted in any different sense. If therefore the word "seized" is used in Sec.102 in the sense above

mentioned, it is obvious that it will only mean the act of taking actual physical possession of the property capable of being so possessed. As there is no property with the bank of which actual physical possession can be taken, order under Sec.102 of the Code cannot be passed to seize amount lying in account of a customer. Here, what the Police Officer has done appears to be that he has issued a prohibition directing the Bank not to pay any amount to the petitioners. He has not in fact seized any amount.

8. As long as the money is in the possession of the thief and capable of seizure, it may be open to the Police Officer to seize it on the ground that it was or was suspected to be stolen property but once it passes into the hands of a debtor and the money becomes unidentifiable, there can be no question of its being seized by the Police Officer. An order by a police officer on a bank prohibiting payment of money to one having an account alleging that it was got by committing an offence is illegal. Therefore, order prohibiting respondent no.1 Bank not to pay any amount to the petitioners, out of their accounts with the Bank is without jurisdiction and liable to be set aside. Under the circumstances, the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds. The order issued by respondent no.2 prohibiting respondent no.1 Bank to pay any amount to the petitioners out of their accounts is hereby set aside and quashed. The respondent no.1 is directed to permit the petitioners to operate their accounts in usual course of business. Rule is made absolute accordingly with no order as to costs.
